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5 Attorney for the plaintiff

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 8 UNITED STATES DISTRICT COURT  
 9 DISTRICT OF OREGON

10 TAMALA BEMIS,

11 Plaintiff,

12 vs.

13 CITY OF EUGENE, OFFICER BRAD  
 14 HANNEMAN, NO. 622, and TEN  
 15 UNKNOWN NAMED DEFENDANTS  
 16 ["DOES" 1-10], inclusive,  
 17 Defendants.

No. 6:

COMPLAINT

1. 42 U.S.C. § 1983; Unlawful Search and Seizure
2. 42 U.S.C. § 1983; Taking, Fifth Amendment
3. 42 U.S.C. § 1983 *Monell* Liability
4. Oregon Tort Claims Act: Negligence

DEMAND FOR JURY TRIAL

18 I. JURISDICTION AND VENUE

19 1. This action is brought by Plaintiff Tamala Bemis for redress for  
 20 deprivations of constitutional rights under 42 U.S.C. § 1983 *et seq.* and the  
 21 jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331 (federal question),  
 22 28 U.S.C. § 1343 (civil rights jurisdiction) and 28 U.S.C. § 1367 (supplemental  
 23 jurisdiction). This Court has jurisdiction to issue declaratory or injunctive relief  
 24 pursuant to 28 U.S.C. §§ 2201 and 2202 and Federal Rule of Civil Procedure 57.

25 2. Plaintiff was within this district and within the jurisdiction of the  
 26 United States of America at times herein alleged, making venue in this district  
 27 proper according to 28 U.S.C. § 1391.  
 28

1 II. INTRODUCTION

2 3. This case arises after the death of the plaintiff's dog, Magic, an  
3 unnecessary and shameful event that resulted from the callous conduct engaged in  
4 by the defendants.

5 III. PARTIES

6 4. Plaintiff Tamala Bemis was a resident of the City of Eugene, within the  
7 jurisdiction of the United States of America, at all times herein alleged.

8 5. Defendant Officer Brad Hanneman was at all material times employed  
9 by the defendant, City of Eugene [City] within the Eugene Police Department  
10 [EPD], and his badge number is believed to be 622, the badge number of the  
11 arresting officer.

12 6. The EPD and City are governmental entities.

13 7. Defendant City was an incorporated association and Oregon  
14 governmental entity and EPD was at all times an unincorporated association and or  
15 an Oregon governmental entity and both were charged with and responsible for  
16 appointing and promoting, the employees of the City, and for the supervision,  
17 training, instruction, discipline, control and conduct of said employees. At all times  
18 alleged herein defendant EPD had the power, right and duty to control the manner in  
19 which the individual defendants carried out the objectives of their employment and  
20 to assure that all orders, rules, instructions, and regulations promulgated were  
21 consistent with the United States Constitution, the Oregon Constitution, the laws of  
22 the United States, the laws of the State of Oregon, and the laws of the municipality.

23 8. Plaintiff is ignorant of the true names and capacities of those  
24 defendants named as Unknown Named Defendants or "Does" and will amend this  
25 complaint to allege the true names and capacities of said defendants when they  
26 become known.

1           9. Each and every defendant who is a natural person is sued in both  
2 his/her individual/personal capacity, as well as in his/her official capacity and/or  
3 supervisory capacity if he/she had any policymaking or supervisory duties,  
4 functions, or responsibilities with respect to the matters alleged.

5 IV. FACTS

6           10. In the early morning hours of October 5, 2015, Ms. Bemis was walking  
7 on a public sidewalk in Eugene, Oregon.

8           11. Defendant Officer Brad Hanneman and Defendant Doe 1 (the  
9 “defendant officers,” which, when necessary refers to both or either one of the two  
10 officers, Defendant Hanneman and Defendant Doe 1) stopped Ms. Bemis as she was  
11 merely walking on a public sidewalk.

12           12. The defendant officers were attired in full EPD uniform with insignias,  
13 and were equipped with firearms, and were operating a marked police vehicle.

14           13. Ms. Bemis did not voluntarily encounter or approach the defendant  
15 officers to speak with them.

16           14. At the time of the stop the defendant officers were unaware of any  
17 crime that had recently been committed in the vicinity of the stop and were unaware  
18 of any crime in progress or that was about to be committed in the vicinity.

19           15. Ms. Bemis did not consent to the stop.

20           16. The defendant officers nevertheless impeded Ms. Bemis and began  
21 interrogating her.

22           17. The defendant officers conducted their interrogation of Ms. Bemis in an  
23 authoritative and officious manner.

24           18. During the interrogation of Ms. Bemis, she acted in a cooperative  
25 fashion and her behavior was not suspicious.

26           19. The defendant officers did not know Ms. Bemis.

27           20. At the time of the stop, Ms. Bemis was acting in a legal manner and  
28

1 was not intoxicated.

2 21. At the time of the stop, Ms. Bemis was not, nor had she been,  
3 committing any crime or infraction, or breaking any law or City ordinance by her  
4 actions, nor was she suspected of doing so.

5 22. At the time of the stop, Ms. Bemis did not have a weapon and was not a  
6 danger to anyone including herself.

7 23. At the time of the stop, the defendant officers were not investigating a  
8 crime in progress, recently committed, or about to be committed.

9 24. At the time of the stop, neither of the defendant officers possessed  
10 reasonable suspicion that Ms. Bemis was involved in criminal activity or other  
11 conduct justifying investigation.

12 25. The defendant officers directed Ms. Bemis to wait while they ran a  
13 warrant check on her.

14 26. The defendant officers did not advise Ms. Bemis that she was free to  
15 leave.

16 27. Ms. Bemis was not aware and did not believe that she was free to leave.

17 28. The defendant officers detained Ms. Bemis for a period of time well  
18 beyond the initial questioning.

19 29. The defendant officers ran a warrant check on Ms. Bemis for no reason  
20 other than that they had the capability to do so.

21 30. After detaining Ms. Bemis and checking for outstanding warrants, the  
22 defendant officers or one of them informed Ms. Bemis that she had warrants for her  
23 arrest (traffic tickets).

24 31. Defendant Hanneman arrested Ms. Bemis, handcuffed her and put her  
25 in the back seat of a police unit.

26 32. Prior to being placed in the police unit, Ms. Bemis was searched in her  
27 pockets and belongings in a manner which she found to be highly offensive.  
28

1           33. The police unit in which Ms. Bemis was placed had an interior video  
2 camera which captured approximately 40 minutes of video and audio of Ms. Bemis  
3 in the back seat and her actions with defendant officers. (**Exhibit 1, attached.**)

4           34. Prior to the stop, Ms. Bemis had parked her car nearby and her constant  
5 canine companion, Magic, a Red Heeler, was in her car.

6           35. Ms. Bemis immediately became worried about her dog, Magic, and  
7 asked the defendant officers and other police officers several times to get Magic out  
8 of the car so that Magic would not die or be injured due to overheating or lack of  
9 food or water. Some pertinent parts of the video (**Exhibit 1**) include:

10       3:23:19     Video started.

11       3:24:36     Ms. Bemis is placed into the police unit in handcuffs.

12       3:30:14     Ms. Bemis is asked about a person she was with.

13       3:31:13     Ms. Bemis tells Defendant Hanneman that Magic is in her  
14 parked car in a man's backyard, that it was going to be too hot for Magic in  
15 the car, and that the windows were rolled up all the way.

16       3:34:50     Ms. Bemis is taken out of the Eugene police unit.

17       3:35:02     Ms. Bemis is introduced to another Eugene Defendant Doe 3,  
18 believes he was a Sergeant, but cannot understand his name.

19       3:37:30     Ms. Bemis is put back in the Eugene police unit.

20       3:43:36     Ms. Bemis again tells Defendant Hanneman about Magic and  
21 asks if officers could contact Ms. Bemis' brother about Magic in her car.

22       3:44:34     Ms. Bemis provides a make, model and description of car and  
23 tells Defendant Hanneman that the car was at the dead end of the street on the  
24 right.

25       3:51:10     Ms. Bemis tells Defendant Doe that her mom could not take  
26 collect calls and Ms. Bemis had no way to reach anyone about Magic.

27       3:53:15     Ms. Bemis again tells Defendant Hanneman where her car is  
28

1 located.

2 4:02:05 Ms. Bemis asks Defendant Hanneman if the police located the  
3 car with Magic.

4 4:02:30 Defendant Doe asks Ms. Bemis for a phone number to call  
5 someone but she could not recall a number (very common in today's cell  
6 phone society).

7 4:03:33 Video ends.

8 36. Despite the repeated requests by Ms. Bemis to locate her car and  
9 remove Magic, the Defendants did not do so.

10 37. During much of the time recorded on the video the defendant officers  
11 or one of them was driving Ms. Bemis in the Eugene area and stopped at an  
12 intermediate location before taking Ms. Bemis to jail.

13 38. Additionally, Ms. Bemis repeated her requests to save Magic after the  
14 period of time shown on the video, however, these requests also fell upon deaf ears.

15 39. Ms. Bemis was kept at the Eugene jail for several days.

16 40. The Eugene jail did not provide telephone directories or telephone  
17 numbers or have a way for inmates to find out phone numbers of individuals and  
18 Ms. Bemis was unable to call anyone to save Magic.

19 41. Further requests by Ms. Bemis to save Magic at the Eugene jail fell  
20 upon deaf ears.

21 42. Upon Ms. Bemis' release from the Eugene jail, she immediately went  
22 to her car and found Magic deceased.

23 43. That Magic died was extremely distressing to Ms. Bemis as Magic was  
24 her constant companion.

25 44. That Magic died in such a cruel fashion, alone, without water, and in  
26 extreme heat, haunts her to this very day.

27 45. Ms. Bemis loved Magic and Magic's needless death has left Ms. Bemis  
28

1 with great remorse and shame.

2 46. Immediately after discovering Magic's death, Ms. Bemis contacted the  
3 EPD by phone and in person and complained about the events.

4 47. After Ms. Bemis complained about the death of Magic, EPD Captain  
5 Sam Kamkar offered Ms. Bemis a check for \$700 from Eugene, Oregon, to settle  
6 the matter of the death of Magic and all other matters related to Ms. Bemis's  
7 detention.

8 48. Captain Kamkar presented Ms. Bemis with a release of liability to sign  
9 but did not give Ms. Bemis a copy of the release to review.

10 49. Ms. Bemis refused the \$700 check and did not sign any release.

11 50. As a result of the defendants' conduct, which was perpetrated  
12 intentionally, recklessly, fraudulently, wantonly, fraudulently, oppressively, and or  
13 with reckless disregard for the rights of Plaintiff and others, and which is so  
14 despicable that it is despised by ordinary people, Plaintiff suffered all of the  
15 damages mentioned herein, including humiliation, fear, feelings of degradation and  
16 helplessness, sleeplessness, anguish, despair, fright, severe mental and emotional  
17 distress, depression, distrust, and embarrassment in violation of her federal  
18 constitutional rights and her rights under the laws of the State of Oregon, and  
19 Plaintiff is entitled to punitive damages.

20 51. All Defendants acted without authorization of law.

21 52. Each Defendant participated in the violations alleged herein, or directed  
22 the violations alleged herein, or knew of the violations alleged herein and failed to  
23 act to prevent them. Each defendant ratified, approved and acquiesced in the  
24 violations alleged herein.

25 53. As joint actors with joint obligations, each defendant was and is  
26 responsible for the failures and omissions of the other.

27 54. By reason of the above described acts and omissions of defendants,  
28

1 Plaintiff was required to retain an attorney to institute and prosecute the within  
2 action, and to render legal assistance to Plaintiff that she might vindicate the loss  
3 and impairment of her rights, and by reason thereof, Plaintiff requests payment by  
4 defendants of a reasonable sum for attorney's fees pursuant to 42 U.S.C. § 1988.

5 V. GENERAL ALLEGATIONS

6 55. Each of the defendants was the agent and/or employee and/or co-  
7 conspirator of each of the remaining defendants, and in doing the things alleged  
8 here, was acting within the scope of such agency, employment and/or conspiracy,  
9 and with the permission and consent of other co-defendants.

10 56. Plaintiff alleges that the defendant officers acted in accordance with  
11 orders given by supervisors from the highest command positions, in accordance with  
12 policies and procedures instituted by the EPD and the City.

13 57. As a direct and proximate cause of the conduct described herein,  
14 Plaintiff has been deprived of her constitutional, statutory and legal rights as stated  
15 herein and has suffered general and special damages, including mental and  
16 emotional distress, anguish, fright, nervousness, anxiety, shock, humiliation,  
17 indignity, embarrassment, discomfort, harm to reputation, and apprehension, and  
18 other damages in an amount according to proof.

19 VI. CLAIMS FOR RELIEF

20 Claim for Relief No. 1

21 Deprivation of Constitutional Rights – Fourth/Fourteenth Amendments – Unlawful

22 Search and Seizure - 42 U.S.C. § 1983

23 By Plaintiff against all EPD Individual Defendants

24 58. Plaintiff realleges and incorporate here the preceding paragraphs and  
25 any subsequent paragraphs of this Complaint.

26 59. At the time of the Incident set forth in the averments above, the rights  
27 of persons within the jurisdiction of the United States of America under both  
28



1 Amendment V and XIV to the United States Constitution to due process of law and  
 2 the equal protection of the laws, and under Amendment IV to freedom from  
 3 unreasonable search and seizure, were in force and effect and the individual  
 4 defendants who subjected Plaintiff to the deprivation of liberty and property and  
 5 who stopped Plaintiff Tamala Bemis without reasonable suspicion to believe she  
 6 was engaged in criminal activity or other conduct justifying investigation and  
 7 prolonged the stop, detained her for unrelated checks exceeding the time needed to  
 8 handle the matter for which the stop was made, and arrested her and thereby  
 9 subjected her to unlawful search and seizure on October 5, 2015, deprived Plaintiff  
 10 of her constitutional rights, which violated those rights, violated the fourteenth  
 11 amendment to the United States Constitution, which caused the injuries to Plaintiff.

12  
 13 Claim for Relief No. 2

14 Deprivation of Constitutional Rights - Fifth/Fourteenth Amendments – Violation of  
 15 Due Process (Deprivation of Property without Due Process) - 42 U.S.C. § 1983

16 By Plaintiff against all EPD Individual Defendants

17 60. Plaintiff realleges and incorporate here the preceding paragraphs and  
 18 any subsequent paragraphs of this Complaint.

19 61. At the time of the Incidents set forth in the averments above, the rights  
 20 of persons within the jurisdiction of the United States of America under both  
 21 Amendment V and XIV to the United States Constitution to due process of law and  
 22 the equal protection of the laws, were in force and effect and the individual  
 23 defendants who engaged in the arbitrary and conscience-shocking conduct by  
 24 stopping Plaintiff and subjecting Plaintiff to a taking of her property, to wit, her dog,  
 25 Magic, deprived Plaintiff of her constitutional rights, which violated those rights,  
 26 violated the fourteenth amendment to the United States Constitution, which caused  
 27 the injuries to Plaintiff.

1 Claim for Relief No. 3

2 Deprivation of Constitutional Rights – Fourth/Fifth/Fourteenth Amendments –  
3 Violation Right to be free from Unreasonable Seizure and Due Process (Deprivation  
4 of Property without Due Process) - Monell/Municipal Liability  
5 Against any and all Monell Defendants

6 62. Plaintiffs re-allege and incorporate here the preceding paragraphs and  
7 any subsequent paragraphs of this Complaint.

8 63. At the time of the Incident set forth in the averments above, the rights  
9 of persons within the jurisdiction of the United States of America under both  
10 Amendment V and XIV to the United States Constitution to due process of law and  
11 the equal protection of the laws and under Amendment IV to be free from  
12 unreasonable searches and seizures were in force and effect and the individual  
13 defendants who engaged in the conduct, as set forth above, who subjected Plaintiff  
14 to the deprivation of liberty and property, deprived Plaintiff of her constitutional  
15 rights, which violated those rights, violated the Fourth and Fourteenth Amendments  
16 to the United States Constitution, which proximately caused injuries to Plaintiff.

17 64. Defendants violated Plaintiff's constitutional rights by creating and  
18 maintaining, among other things, the following unconstitutional customs and  
19 practices, inter alia:

20 65. Defendant City and EPD implemented an official policy, de facto  
21 policy, or an unwritten official policy of, by act or omission, failing to in any way  
22 assist arrestees in caring for their animals, pets, or livestock from neglect or harm as  
23 a result of their being left without the care of their caretaker.

24 66. Defendant City and EPD implemented a widespread or longstanding  
25 practice or custom of, by act or omission, failing to in any way assist arrestees in  
26 caring for their animals, pets, or livestock from neglect or harm as a result of their  
27 being left without the care of their caretaker.

1           67. Defendants City and EPD lacked an official policy, de facto policy, or  
2 unwritten policy to in any way assist arrestees in caring for their animals, pets, or  
3 livestock from neglect or harm as a result of their being left without the care of their  
4 caretaker.

5           68. In this case it was Defendant City's and EPD's official policy, de facto  
6 policy, or an unwritten official policy of, by act or omission, failing to in any way  
7 assist arrestees in caring for their animals, pets, or livestock from neglect or harm as  
8 a result of their being left without the care of their caretaker that caused the  
9 deprivation of plaintiff's rights by the defendants; that is the Defendants City's and  
10 EPD's official policy, de facto policy, or an unwritten official policy is so closely  
11 related to the deprivation of the plaintiff's rights as to be the moving force that  
12 caused the ultimate injury.

13           69. In this case it was Defendant City's and EPD's widespread or  
14 longstanding practice or custom of, by act or omission, failing to in any way assist  
15 arrestees in caring for their animals, pets, or livestock from neglect or harm as a  
16 result of their being left without the care of their caretaker that caused the  
17 deprivation of plaintiff's rights by the defendants; that is the Defendants City's  
18 and/or EPD's widespread or longstanding practice or custom is so closely related to  
19 the deprivation of the plaintiff's rights as to be the moving force that caused the  
20 ultimate injury.

21           70. In this case it was Defendant City's and EPD's lack of an official  
22 policy, de facto policy, or unwritten policy of, by act or omission, failing to in any  
23 way assist arrestees in caring for their animals, pets, or livestock and to protect them  
24 from neglect or harm as a result of their being left without the care of their caretaker  
25 that caused the deprivation of plaintiff's rights by the defendants; that is the  
26 Defendants City's and EPD's lack of an official policy, de facto policy, or unwritten  
27 policy is so closely related to the deprivation of the plaintiff's rights as to be the  
28

1 moving force that caused the ultimate injury.

2 71. Defendant City's and EPD's policy, custom, practices or lack thereof,  
3 as described herein, were within the control of Defendants City and EPD and within  
4 the feasibility of Defendants City and EPD to alter, adjust and/or correct so as to  
5 prevent some or all of the unlawful acts and injury complained of herein by  
6 Plaintiff.

7 Claim for Relief No. 4

8 Oregon Tort Claims Act -- Negligence

9 By Plaintiff against all Defendants

10 72. Plaintiff realleges and incorporates here the preceding paragraphs and  
11 any subsequent paragraphs of this Complaint.

12 73. At the time of the arrest of Ms. Bemis, Defendants knew or should have  
13 known that Ms. Bemis' dog Magic had been left by Ms. Bemis in her parked car  
14 with the windows up.

15 74. Defendants knew or should have known that Magic, without the  
16 intervention of Ms. Bemis or another caretaker, would suffer from lack of water and  
17 food, and be exposed to extreme heat, which the dog would not survive.

18 75. Defendants had a duty of care to Ms. Bemis, which extended to her  
19 dog, while she was in their custody.

20 76. Defendants breached that duty by failing to assist Ms. Bemis in caring  
21 for her pet, Magic, and failing to protect Magic from neglect or harm as a result of  
22 being left without care.

23 77. Defendants' actions, or failure to act, were the actual and proximate  
24 cause of the death of Ms. Bemis' pet, Magic.

25 78. As a result of defendants' conduct, which fell below the standard of  
26 care, Ms. Bemis' pet, Magic, suffered from lack of water and food, extreme heat  
27 exposure, and ultimately died while Ms. Bemis was in the custody of defendants.  
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79. As a result of defendants' conduct, which fell below the standard of care, Ms. Bemis' lost the companionship and love of her dog Magic.

## VII. REQUEST FOR RELIEF

Plaintiff seeks judgment as follows:

1. A declaratory judgment that Defendants' conduct detailed herein was a violation of the rights of the Plaintiff and the class members under the Constitution and laws of the United States;

2. General, special and compensatory damages for Plaintiff for the violations of her federal constitutional rights and for her claims under the common law, all to be determined according to proof;

3. An award of punitive and exemplary damages against the individual Defendants to be determined according to proof;

4. An award of attorneys' fees pursuant to 42 U.S.C. § 1988;

5. Costs of suit;

6. Pre- and post-judgment interest as permitted by law;

7. Such other and further relief as the Court may deem just and proper.

DATED: October 4, 2017

Jeff Dominic Price

By /s/ Jeff Dominic Price  
Jeff Dominic Price, Esq.  
Attorney for Plaintiff

## DEMAND FOR JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs requests a jury trial on all issues and claims triable to a jury.

By /s/ Jeff Dominic Price  
Jeff Dominic Price, Esq.  
Attorney for Plaintiff